

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

In the Matter of

VOITH INDUSTRIAL SERVICES, INC.

Cases 9-CA-075496

9-CA-078747

and

9-CA-082437

GENERAL DRIVERS, WAREHOUSEMEN &  
HELPERS, LOCAL UNION NO. 89, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

and

UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, AFL-CIO

and

UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, LOCAL UNION NO. 862, AFL-CIO

and

GENERAL DRIVERS, WAREHOUSEMEN &  
HELPERS, LOCAL 89, AFFILIATED WITH  
THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS

Case 9-CB-075505

9-CB-082805

**RESPONDENTS UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO AND ITS  
LOCAL 862's MEMORANDUM IN SUPPORT OF ITS REQUEST THAT THE  
CHARGES AGAINST THEM BE DISMISSED**

## I. FACTS

The General Counsel levies two charges against the International<sup>1</sup> and Local 862. First, it alleges that they “received assistance and support from Respondent Voith which allowed Respondent UAW International and Respondent UAW Local 862 to meet with Respondent Voith’s employees in order to urge the employees to sign membership applications and check off authorizations.”<sup>2</sup> The General Counsel alleges that these actions occurred on three specific dates: February 20, April 11 and April 16, 2012.<sup>3</sup> The General Counsel further charges that the International and Local 862 “obtained recognition from Respondent Voith as the exclusive collective-bargaining representatives of the Unit”<sup>4</sup> on February 22 and May 1, 2012 “even though they did not represent an uncoerced majority of the unit.”<sup>5</sup> The General Counsel further alleges that the recognition on February 22, 2012 was obtained prior to the start of normal operations and employment of a representative employee complement.<sup>6</sup>

The General Counsel elicited extensive testimony regarding many incidents involving Local 862. These included, but are not limited to, Local 862’s officers meeting with Teamsters 89 members and officers to discuss the award of the vehicle processing contract to Ford, Local 862 providing assistance in collecting and transmitting applications from Teamster members to Voith, and Local 862 members providing Voith applications to Teamster members. The General Counsel also provided testimony that

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<sup>1</sup> Throughout this brief, the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO is referred to as “the International.” Local 862 of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO is referred to as “Local 862.”

<sup>2</sup> Order Consolidating Cases, Amended Second Consolidated Complaint and Order Scheduling Hearing dated August 3, 2012, at ¶19 (“Am. Sec. Consol. Cmplt.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶20(a).

<sup>5</sup> *Id.* at ¶20(c).

<sup>6</sup> *Id.* at ¶20(d).

Local 862 colluded with Voith on Voith's bid for the vehicle processing work.<sup>7</sup> None of these incidents are the subject of charges that the ALJ must decide and none are related to the discrete allegations against the International and Local 862. For this reason, discussion of these and all other issues and facts raised by the General Counsel that are unrelated to the charges lodged against the International and Local 862 are omitted from this brief.

**A. The General Counsel alleges that the International and Local 862 received unlawful assistance from Voith.**

The General Counsel alleges that "[a]bout February 20, April 11, and April 16, 2012, Respondent UAW International and Respondent UAW Local 862 received assistance and support from Respondent Voith which allowed Respondent UAW International and Respondent UAW Local 862 to meet with Respondent Voith's employees during work time in order to urge its members to sign membership applications and check off authorizations."<sup>8</sup> The record evidence does not support this assertion.

**1. February 20, 2012 – New Employee Orientation**

**a. Local 862**

Voith held an orientation session on February 20, 2012 for new janitorial employees. Doug Couch, Voith's Facility Manager at that time, led the orientation meeting.<sup>9</sup> The training session covered safety as well as commonly used cleaning supplies.<sup>10</sup> In addition, the new employees were shown the tasks they would complete

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<sup>7</sup> This testimony lacked any factual basis and was credibly contradicted by Local 862 and Ford witnesses.

<sup>8</sup> *Id.* at ¶19.

<sup>9</sup> Transcript at 1770. (References to the transcript of the hearing in this matter shall be noted as "Tr. at [page]" hereafter.).

<sup>10</sup> *Id.* at 619, 1836.

during their workday as a janitor.<sup>11</sup> All of the instructors were Voith employees.<sup>12</sup> There was no testimony and no assertion by the General Counsel that any member or officer of Local 862 or the International had any role in the orientation session or was present as an orientation speaker. As Couch confirmed, the UAW was not on the orientation agenda.<sup>13</sup>

During this orientation meeting, Couch allowed the employees a break and asked a current employee familiar with the plant, Sharita Blackmon, to show the new employees the cafeteria.<sup>14</sup> Notably, the cafeteria was located in a different building from the orientation meeting and required walking outdoors.<sup>15</sup> As Keith Robinson, a new employee at the orientation, testified, it would have been impossible for him to find the cafeteria that day as he was unfamiliar with the facility.<sup>16</sup>

At this time, there were limited areas in which the employees could take a break due to the construction at the facility. Specifically, they were limited to the orientation meeting room, the cafeteria, an outdoor area outside the cafeteria or their cars.<sup>17</sup> The cafeteria is a large room capable of seating several hundred employees.<sup>18</sup> Although open to anyone, the outdoor area was primarily occupied by smokers as smoking was not permitted inside the facility.<sup>19</sup>

When the employees arrived at the cafeteria, a number of Local 862 officials, including Steve Stone, Herb Hibbs, Barry Ford, Jeff Hale and Mike Parker were

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<sup>11</sup> *Id.* at 619.

<sup>12</sup> *Id.* at 619.

<sup>13</sup> *Id.* at 1843.

<sup>14</sup> *Id.* at 2855.

<sup>15</sup> *Id.* at 2855.

<sup>16</sup> *Id.* at 607-8.

<sup>17</sup> *Id.* at 2856.

<sup>18</sup> *Id.* at 2961.

<sup>19</sup> *Id.* at 603.

present.<sup>20</sup> Each of them was permitted to be in the cafeteria without obtaining permission from Voith or Ford due to their status as Ford employees.<sup>21</sup> As Stone testified without contradiction, he did not obtain Voith's permission to be present in the cafeteria; he did not ask Voith to announce his presence in the cafeteria; he did not receive information from Voith regarding the location of the new employees on break; and he did not have any contact with Voith regarding this interaction with Voith's new employees.<sup>22</sup>

These Local 862 officers and members provided the new Voith employees with information regarding the UAW as well as a brochure that described individual rights with respect to joining a union generally.<sup>23</sup> They answered questions from the new employees and provided them with UAW authorization cards if they were interested in signing them.<sup>24</sup> As they consistently testified, they did not threaten anyone with the loss of their job if they did not sign a card.<sup>25</sup> In fact, the brochure that they provided to the new employees outlined the new employees' rights under the NLRA, including the right to join or refrain from joining a union.<sup>26</sup>

Local 862's testimony is consistent with that of the General Counsel's witnesses. Keith Harrison testified that he went to the cafeteria during the break in orientation on February 20<sup>th</sup>. When he got to the cafeteria, there were "UAW members" present who provided information about the union.<sup>27</sup> As Harrison further testified, "It was stated that if we decided that we wanted to join the union we could fill out the card. It wasn't a

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<sup>20</sup> *Id.* at 2959.

<sup>21</sup> *Id.* at 2964.

<sup>22</sup> *Id.* at 2960; *see also* testimony of H. Hibbs at 2913.

<sup>23</sup> *Id.* at 2959; GC Ex. 56. (General Counsel exhibits are noted as GC Ex. [exhibit number]).

<sup>24</sup> Tr. at 2959, 2961, 2912.

<sup>25</sup> *Id.* at 2961, 2943.

<sup>26</sup> GC Ex. 56.

<sup>27</sup> Tr. at 581.

forced thing, or anything. It was just if you wanted to join...you could. If you didn't, it wasn't no big issue."<sup>28</sup> The General Counsel next provided the testimony of Cody Jagers who was also in the cafeteria on February 20, 2012. Jagers initially stated that he was told he didn't have to sign the card, "but if you don't sign the cards, I'm not sure if you will have a job or not. They didn't say that you would lose your job if you didn't sign it."<sup>29</sup> On cross examination, Jagers admitted, "they said that you don't have to sign it, but I inferred – it seemed like if you didn't sign it, then you didn't have a job."<sup>30</sup> Thus, Jagers' only evidence that he had to sign a UAW card to keep his job is his inference that he had to sign a union card to keep his job – despite admittedly being told exactly the opposite by Local 862 and being given a handout that stated that right.

The General Counsel also presented the testimony of Reginald Farrell, another individual at the February 20<sup>th</sup> orientation session who met UAW representatives in the cafeteria on the work break. Just as the others testified, Farrell testified that the UAW representatives told him "we didn't have to join..."<sup>31</sup> Farrell went on to testify that he was told "if we did not join, it was a good chance that we might – probably won't be working if something was to happen."<sup>32</sup> Notably, Farrell made no mention of this statement in his NLRB affidavit, taken in May 2012.<sup>33</sup> Instead, Farrell reported in his affidavit only that he felt "pressured" to sign a card. But when asked to explain how he was pressured, he could only state that there were Local 862 representatives nearby and that it was like an usher in church handing him a fan.<sup>34</sup> Finally, the General Counsel

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<sup>28</sup> *Id.* at 582.

<sup>29</sup> *Id.* 629.

<sup>30</sup> *Id.* at 629.

<sup>31</sup> *Id.* at 649.

<sup>32</sup> *Id.* at 649.

<sup>33</sup> *Id.* at 687.

<sup>34</sup> *Id.* at 696.

offered the testimony of Teresa Ceesay, a former Voith employee with no interest in the present case. She credibly testified that there was no mention of the Union in the orientation meeting,<sup>35</sup> that she had the ability to take her break where she wanted,<sup>36</sup> that Local 862 officials were in the breakroom talking to the group, not to individuals,<sup>37</sup> that she was given a choice to sign the card<sup>38</sup> and that she received the brochure that clearly states her rights regarding unionization.<sup>39</sup>

Although the General Counsel posits that the Local 862 officials were present by virtue of some unlawful coordination with Voith, Blackmon credibly testified that Steve Stone, Local 862's Bargaining Chairperson for LAP, asked her to text him when the group took their break.<sup>40</sup> Blackmon did so, alerting Stone that the break was at 9:30 a.m. and would be in the main cafeteria.<sup>41</sup> When Stone received this information, he gathered Hibbs, Ford, Hale and Parker and went to the cafeteria.<sup>42</sup> As Stone testified, at no time did he discuss his intention to meet with the employees with any member of Voith management, ask Voith to announce that Local 862 representatives would be in the cafeteria or seek permission from Voith to interact with its new employees.<sup>43</sup>

Voith Manager Doug Couch testified about this meeting as well. As Couch testified, he never mentioned any union during the orientation session, there was no union discussion on the agenda for the training and he did not discuss union affiliation during that training session.<sup>44</sup>

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<sup>35</sup> *Id.* at 421.

<sup>36</sup> *Id.* at 419.

<sup>37</sup> *Id.* at 422.

<sup>38</sup> *Id.* at 423.

<sup>39</sup> *Id.* at 430.

<sup>40</sup> *Id.* at 2858.

<sup>41</sup> *Id.* at 2859.

<sup>42</sup> *Id.* at 2959.

<sup>43</sup> *Id.* at 2960.

<sup>44</sup> *Id.* at 1843.

The extent of any testimony regarding assistance is the inconsistent testimony by Jagers that the UAW would be in the breakroom, and Ferrell that a union would be in the breakroom during the break. This is disputed by General Counsel's witnesses Ceesay and Harrison, as well as Couch. But even if Couch made such a statement, this is insufficient evidence of assistance by Voith to Local 862. There is no evidence that the Local's presence in the breakroom was due to any assistance by Voith. There is no evidence that Voith communicated the date or time of the orientation to the Local, that Voith provided Local 862 officials with access to a restricted area of the facility otherwise inaccessible to Local 862, or that Voith provided the Local with any resources to assist in obtaining authorization cards. To the contrary, the Local's undisputed testimony is that its officials and agents have access to the cafeteria by virtue of their representation of Ford's hourly workforce. There is no evidence that Voith has any authority to include or exclude Local officials from any area of the plant. Thus, the extent of the evidence that Voith unlawfully assisted the Local on February 20, 2012 is the disputed statement allegedly made by Couch that UAW officials would be in the cafeteria.

**b. The International**

The General Counsel was only able to identify a single individual from Local 862 who was present in the cafeteria – Teddy Hunt.<sup>45</sup> As Blackmon and Stone testified, Steve Stone, Herb Hibbs, Barry Ford, Jeff Hale and Mike Parker were present on February 20, 2012.<sup>46</sup> The General Counsel does not contend that any of these

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<sup>45</sup> General Counsel Witness Keith Robinson identified Hunt as being present in the cafeteria. Tr. at 584. Neither of the General Counsel's other two witnesses were able to specifically identify any individuals present in the cafeteria on February 20, 2012. Tr. at 627 and 649.

<sup>46</sup> *Id.* at 2857.



individuals are officials with the International.<sup>47</sup> To the contrary, the General Counsel alleges and Local 862 admits that Stone and Hunt are and remain, agents of Local 862.<sup>48</sup> No evidence was provided during the hearing in support of the General Counsel's allegation that the International received assistance from Voith in obtaining authorization or dues check-off cards on or about February 20, 2012.

## **2. April 10, 2012 – New Employee Orientation**

### **a. Local 862**

On April 10, 2012, Voith conducted orientation for another group of new employees. One of the new employees was the son of Pat Priddy, a UAW member employed by Ford.<sup>49</sup> Priddy contacted Stone and explained that his son was in the Voith orientation group.<sup>50</sup> He asked Stone to stop by and introduce himself.<sup>51</sup> Stone did so, bringing with him two other Local bargainers.<sup>52</sup> They did not bring authorization cards or the brochure distributed in February with them.<sup>53</sup> They met with the new employees while they were on break in a small cafeteria.<sup>54</sup> During the ten or 15 minute chat, Stone answered questions about the plant, the anticipated start up, the models that would be produced and the like.<sup>55</sup> They did not discuss membership in the UAW during this interaction.<sup>56</sup>

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<sup>47</sup> Am. Sec. Consol. Cmplt., at ¶8.

<sup>48</sup> *Id.*; Unions' Answer to same at ¶8.

<sup>49</sup> Tr. at 2962, 2963.

<sup>50</sup> *Id.* at 2962.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 2963.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 2964.

<sup>56</sup> *Id.*

As Stone testified without contradiction, Local 862 did not ask permission from Voith to speak to these new employees.<sup>57</sup> They did not ask for permission to be in the small cafeteria because, as was the case in February, they had the right to be in that area without Voith's knowledge or permission.<sup>58</sup> The General Counsel presented only the testimony of Patti Murphy on this April 10, 2012 meeting.<sup>59</sup> Murphy testified that Stone was present in a breakroom and provided information about the UAW.<sup>60</sup> Murphy confirmed that Stone did not have union cards available at that time.<sup>61</sup> Murphy did not testify that Stone threatened anyone at the meeting with the loss of their job or any other negative consequences for failing to sign a union card at some time in the future. She did not testify that anyone from Voith organized, coordinated or assisted Local 862 in being in the breakroom. Murphy did not then and has not since signed a UAW card.<sup>62</sup> She remains a member of Teamsters Local 89.<sup>63</sup> There was no testimony that any individual felt pressured into signing a UAW card during this interaction with Stone on April 10, 2012. In fact, there was consistent testimony that cards were not available for the new employees to sign, even if they chose to do so.

It remains unclear if the General Counsel considers this interaction with Stone on April 10, 2012 to be an act of receiving unlawful assistance from Voith. The General Counsel's allegations in Paragraph 19 of the Complaint state that the International and Local 862 received assistance and support from Voith which allowed them to meet with

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Two other General Counsel witnesses were also present at the April 10, 2012 orientation, however, the General Counsel declined to question them about their interactions, if any, with agents of Local 862 during their break. Tr. at 1002 (Johnson) & Tr. 1393-4 (Helm). This further suggests that the General Counsel lacks evidentiary support for an allegation that Local 862 or the International received unlawful assistance on this date.

<sup>60</sup> Tr. at 1028

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 1071.

<sup>63</sup> *Id.* at 1019.

employees to secure union cards. The date of this assistance is, intentionally, vague, stating that the assistance was received “about April 11, 2012.” Because the General Counsel offered testimony regarding this interaction, Local 862 and the International respond to it in an abundance of caution.

**b. The International**

The General Counsel presented no evidence that the International was involved in the meeting with Voith’s new employees on April 10, 2012.

**3. April 11, 2012 – New Employee Orientation (yard)**

**a. Local 862**

The General Counsel alleges that Teddy Hunt and Sharita Blackmon received impermissible assistance when they solicited union authorization cards from Voith employees during a work break on April 11, 2012. The interaction between Hunt and Blackmon and the Voith employees occurred in the middle of the vehicle processing yard. The General Counsel struggled to piece together an allegation regarding this incident because their witnesses provided such divergent testimony.

There is no question that a group of Voith employees who were in orientation were in the yard during the afternoon of April 11, 2012. Dennis Frank, Voith’s Operations Manager, was responsible for leading the orientation session in the yard. With him were several supervisors including Scott Board, Tom Baker, Jason Miller and Caleb [last name unknown].<sup>64</sup> It is also undisputed that Frank and the supervisors left the employees and stood some distance from them in the yard after about an hour of training. Finally, it is undisputed that Teddy Hunt and Sharita Blackmon approached the group and made UAW authorization cards available for them to sign if they wished

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<sup>64</sup> *Id.* at 2269, 465.

to do so.<sup>65</sup> This is the end of any semblance of consistent testimony from the General Counsel's witnesses regarding this interaction.

According to the General Counsel's witnesses:

- The new employees walked<sup>66</sup> or took vans to the yard training location.<sup>67</sup>
- Teddy Hunt and Sharita Blackmon arrived together<sup>68</sup> or separately.<sup>69</sup>
- Hunt arrived prior to Frank and the supervisors leaving and chatted with Frank<sup>70</sup> or he arrived after Frank left the group.<sup>71</sup>
- Frank and the supervisors were 15 to 25 feet away,<sup>72</sup> 30 feet away,<sup>73</sup> or at least 50 feet away<sup>74</sup> from the new employees.
- Frank received a phone call prior to stepping away from the group or he didn't.
- Frank said "we have a situation"<sup>75</sup> or "someone want to talk to you"<sup>76</sup> or nothing at all before he stepped away.<sup>77</sup>

There is testimony that Hunt and Teamster Local 89 members engaged in a heated discussion regarding the signing of union cards but there is a dispute among the General Counsel's witnesses as to whether Hunt yelled or shouted.<sup>78</sup> The Teamster members, including Stein, Rhodes, Cheatham and Flanagan explained to Hunt,

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<sup>65</sup> *Id.* at 2964, 2946.

<sup>66</sup> *Id.* at 1281-2.

<sup>67</sup> *Id.* at 1215-6.

<sup>68</sup> *Id.* at 1224.

<sup>69</sup> *Id.* at 1141, 1263.

<sup>70</sup> *Id.* at 1260.

<sup>71</sup> *Id.* at 1140, 1244, 466-7.

<sup>72</sup> *Id.* at 1262-3.

<sup>73</sup> *Id.* at 898.

<sup>74</sup> *Id.* at 1140.

<sup>75</sup> *Id.* at 1139.

<sup>76</sup> *Id.* at 465 (Note that this testimony was inconsistent with the witness' affidavit).

<sup>77</sup> *Id.* at 937.

<sup>78</sup> *Id.* at 1248 (Hunt did not yell) & 467, 553 (inconsistent testimony from Stein that Hunt screamed and didn't scream).

Blackmon and the other Voith employees present that they did not have to sign a UAW union card.<sup>79</sup> None of these four individuals signed a UAW union card during the April 11, 2012 interaction.

There is some disparity among the General Counsel's witnesses as to the effect of this conversation between Hunt and the Teamster members. Some report that four to six of the 17 employees present signed cards;<sup>80</sup> other testified that six or seven of the 15 present signed;<sup>81</sup> another stated that eight or nine of the 15 signed.<sup>82</sup> Again, the General Counsel was unable to elicit any consistent testimony from its witnesses on this critical point.

The General Counsel was also unable to provide a single witness willing to testify that he or she felt coerced into signing a card during this April 11, 2012 interaction. In fact, to the contrary, the witnesses who testified were adamant that they did not have to sign a card and not a single one of them did so. They were also adamant in explaining to their co-workers that they did not have to sign a union card.

#### **b. The International**

Despite the allegations against the International contained in the Amended Second Consolidated Complaint, the General Counsel failed to present any evidence that any agent of the International was involved in the interaction between Voith employees and Hunt and Blackmon on April 11, 2012. The only testimony regarding the International's involvement in soliciting cards came from Stone. As Stone testified, sometime on April 11, 2012, Hunt contacted Stone and explained that the Teamsters were soliciting cards from yard workers and were threatening employees with job loss if

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<sup>79</sup> *Id.* at 467-8, 893-4, 1141, 1246, 1293.

<sup>80</sup> *Id.* at 1222.

<sup>81</sup> *Id.* at 1166.

<sup>82</sup> *Id.* at 1141, 1166.

they did not sign a Teamsters card.<sup>83</sup> Stone contacted the International's in-house counsel for advice regarding the Local's right to solicit cards.<sup>84</sup> Counsel informed Stone that the Local could solicit cards from Voith's employees.<sup>85</sup> There was no record evidence that the International had any involvement beyond counsel informing Stone that it was permissible for the Local to engage in solicitation. There was no evidence that the International advised the Local as to the method or manner of solicitation or the timing or location of the solicitation. Critically, the General Counsel failed to introduce any evidence even hinting that the International engaged in discussions with Voith regarding solicitation of its employees on April 11, 2012 or requested or received some form of assistance from Voith to engage in that solicitation.

**4. April 16, 2012 – Meeting with current Voith employees**

**a. Local 862**

Finally, the General Counsel alleges that the Local received assistance and support from Voith in obtaining cards on or about April 16, 2012. The facts regarding this meeting are largely undisputed and completely fail to support the General Counsel's allegation.

As numerous witnesses testified, Sharita Blackmon distributed a letter from Local 862 to the vehicle processing employees on or about April 17, 2012. The letter explained that Local 862 did not represent the vehicle processing employees because Voith had withdrawn its recognition of Local 862 as the collective bargaining agent for the employees.<sup>86</sup> The letter clearly explained that the vehicle processing employees did

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<sup>83</sup> *Id.* at 2946.

<sup>84</sup> Tr. at 2977.

<sup>85</sup> *Id.*

<sup>86</sup> GC Ex. 40.

not have “an authorized collective bargaining agent.”<sup>87</sup> The letter raised questions among the employees, but Blackmon did not comment on or respond to questions regarding the letter.<sup>88</sup> As a result, some employees sought additional information. Blackmon asked Stone to meet with the employees to answer their questions.<sup>89</sup> Stone agreed to meet with the employees on their break time at the building assigned by Ford for Voith’s employees’ use.<sup>90</sup> Stone relied on Blackmon to tell him the employees’ break time.<sup>91</sup> The building is Ford property and is located in the yard area where the vehicle processing employees work.<sup>92</sup>

As with meetings with Voith employees in the past, Stone was permitted to be on Ford’s property in the building Ford assigned to Voith by virtue of his employment with Ford.<sup>93</sup> Stone did not ask Voith or Ford for permission to meet with the employees.<sup>94</sup> When he arrived at the building, he did not announce his arrival to any member of Voith management or ask permission to sit in the breakroom.<sup>95</sup> Stone answered questions regarding union representation, and – more specifically – UAW recognition, for 15 to 20 minutes.<sup>96</sup> Voith’s employees came late, left early and even came in and out of the meeting or didn’t attend at all.<sup>97</sup> This corroborates the testimony by Blackmon, Stone and Couch that the employees were on break and the meeting was not mandatory.

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<sup>87</sup> *Id.*

<sup>88</sup> Tr. at 2870.

<sup>89</sup> *Id.* at 2970

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 2971.

<sup>92</sup> *Id.* at 2970.

<sup>93</sup> *Id.* at 2964.

<sup>94</sup> *Id.* at 2971.

<sup>95</sup> *Id.* This was corroborated by Frank who testified that he did not see any non-Voith employee enter the building and did not invite the Local 862 officials in. *Id.* at 2278.

<sup>96</sup> *Id.* at 2972.

<sup>97</sup> *Id.* at 479, 1029, 2973, 1477, 903, 1228.

At some point, Baker notified Frank that he needed to come to the breakroom.<sup>98</sup> Frank entered the breakroom, observed individuals he didn't know addressing his employees and informed the employees that break was over and they should return to work.<sup>99</sup> It is undisputed that UAW authorization cards were not available during this meeting.<sup>100</sup> Moreover, there is no testimony whatsoever that the Local 862 agents discussed signing union authorization cards, had authorization union cards, had dues check-off authorizations or even attempted to convince anyone to join the UAW.

**b. The International**

As with each of the previous allegations of impermissible assistance, the General Counsel completely fails to provide any evidence that the International was involved in the meeting or had any role in the interactions between Local 862 officials and the Voith employees.

**B. The General Counsel alleges that the International and Local 862 improperly sought recognition as the vehicle processors' collective bargaining agent.**

The General Counsel also alleges that Local 862 and the International engaged in conduct that violates the Act when it requested and obtained recognition on or about February 22 and May 1, 2012.<sup>101</sup>

At some time in early 2012, Stone learned that Ford awarded the bid for the vehicle processing work to Voith. He also learned that Voith had hired the majority of their employees for the vehicle launch and that these employees were unrepresented.<sup>102</sup> After discussing organizing with both the UAW Regional office and the International

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<sup>98</sup> *Id.* at 2277.

<sup>99</sup> *Id.* at 2973.

<sup>100</sup> *Id.* at 2972, 947, 1399.

<sup>101</sup> Am. Sec. Consol. Cmplt at ¶20, 27.

<sup>102</sup> Tr. at 2966.



UAW Ford Department, Stone began speaking with new Voith employees about joining the UAW.<sup>103</sup> After collecting authorization cards in February, Stone made the decision to seek recognition from Voith.<sup>104</sup> This decision was made with George Palmer, UAW Region 8 representative.<sup>105</sup> Thus, in late February 2012, Local 862 retained the services of Paula Burke, a Human Resources professional employed by Nuplex & Resins, LLC, a local chemical plant, to conduct a card check.<sup>106</sup> The Local obtained orientation sign-in sheets from Voith to permit Burke to compare the signatures on company documents to those on the UAW authorization and dues check-off cards.<sup>107</sup> At the time of the card check, Voith employed 50 people in vehicle processing positions. All 50 of these employees had elected the UAW as their collective bargaining representative by virtue of signing UAW authorization cards.

After reviewing the cards and the documents provided by Voith, Burke determined that the signatures were authentic and the UAW appeared to represent a majority of the employees of the vehicle processing unit.<sup>108</sup> Burke informed Erwin Gebhardt, Voith's Director of Labor Relations, of the results.<sup>109</sup> Gebhardt recognized Local 862 as the exclusive collective bargaining representative of the vehicle processing employees by letter to both UAW Region 8 and the International.<sup>110</sup> It is undisputed that Voith management did not see the cards at any time.<sup>111</sup>

In late April 2012, Voith withdrew recognition of the UAW after determining that the company had not yet started normal vehicle processing duties at the time of

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<sup>103</sup> *Id.* at 2966.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 2967.

<sup>106</sup> *Id.* at 2976.

<sup>107</sup> *Id.* at 2967.

<sup>108</sup> GC Ex. 91.

<sup>109</sup> *Id.*

<sup>110</sup> Tr. at 2968; GC Ex. 31, GC Ex. 32.

<sup>111</sup> Tr. at 2016.

recognition.<sup>112</sup> As discussed previously, Blackmon distributed a letter to Voith's vehicle processors on or about April 17, 2012 explaining that Voith withdrew its recognition of the UAW and further explaining that the UAW would use the employees' signed cards to seek recognition at a later date.<sup>113</sup> Blackmon was unable to answer questions regarding the withdrawal of recognition and asked Stone to meet with the employees to discuss the issue. This meeting occurred during the vehicle processing employees' afternoon break on April 17, 2012 and is discussed in detail in Section I(A)(1)(a) of this brief.

After the withdrawal of recognition, the UAW continued collecting cards – an undisputedly lawful action – until late April 2012 when it again sought card check recognition. The International arranged for an independent third party, Kathy Porach, a former NLRB Field Examiner, to review the cards and employee signatures on Voith documents.<sup>114</sup> Porach provided a "Certification of Card Count" confirming the authenticity of the signatures.<sup>115</sup> UAW in-house counsel, Bill Karges, transmitted the Certification to Voith's outside counsel, Steve Richey, on April 30, 2012.<sup>116</sup> On the basis of this card check, wherein 57 of Voith's 75 vehicle processing employees selected the UAW as their exclusive representative, Voith again extended recognition to the UAW as the exclusive collective bargaining agent of the vehicle processing employees.<sup>117</sup>

The General Counsel contends that the UAW did not represent an uncoerced majority of the employees in the unit at the times it sought recognition and, therefore, improperly gained recognition as the employees' collective bargaining agent. Notably, the General Counsel has failed to provide a single employee willing to testify that he or

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<sup>112</sup> *Id.* at 2092-3.

<sup>113</sup> Tr. at 2869-70; GC Ex. 40.

<sup>114</sup> GC Ex. 71.

<sup>115</sup> GC Ex. 34 (p.2).

<sup>116</sup> GC Ex. 71.

<sup>117</sup> GC Ex. 34, GC Ex. 111.

she unwillingly signed a card due to coercion. Instead it offers an employee who felt “pressured” to sign a card, just like he feels “pressured” at church when an usher offers him a fan and testimony from individuals who admitted that they were not threatened with job loss if they didn’t sign a card, but inferred such a threat for some undisclosed reasons. The General Counsel also apparently relies on disputed allegations that Hunt shouted at employees in the yard on April 11, 2012. In fact, contrary to presenting evidence of coercion on April 11, 2012, the General Counsel presented considerable evidence of Voith employees who (1) publicly argued that they did not have to sign a UAW card, (2) counseled other employees that they did not have to sign a UAW card, and (3) never signed a UAW card. This evidence does not support coercion in obtaining authorization cards.

## **II. ARGUMENT**

### **A. Local 862 did not receive unlawful assistance from Voith in soliciting union authorization cards from its employees.**

The Board recognizes a violation of Section 8(a)(2) of the Act when an employer to provide unlawful assistance to a union in the organizing of its employees. It further recognizes a violation when a union accepts unlawful assistance. To determine if unlawful assistance has been rendered or accepted, it is necessary to consider the totality of the circumstances and determine if the assistance “inhibit[s] employees in their free choice regarding a bargaining representatives or interfere[s] with the representative’s maintenance of an arm’s length relationship with [the union].<sup>118</sup> In considering the totality of the circumstances, the Board considers both indirect and direct pressures on employees. Direct pressures include direct solicitation by or in front

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<sup>118</sup> *Duane Reade, Inc.*, 338 NLRB 943, 950 (2003). See also *Coamo Knitting Mills, Inc.*, 150 NLRB 579, 582 (1964).

of company management.<sup>119</sup> For instance, in *Famous Castings Corp.*, the Board found improper assistance where company management directed employees to talk to the union and, later, gave an employee the union's authorization cards for distribution.<sup>120</sup>

Indirect pressures include directing employees to meet with union representatives on work time.<sup>121</sup> For example, in *Tuschak/Jacobson, Inc.*, the Board found improper assistance when two managers urged employees to meet with a union organizer and an employee that the employer had already designated as the union steward.<sup>122</sup> But the Board has also found that simply granting a union access to a facility is insufficient to warrant an unlawful assistance finding.<sup>123</sup>

A critical factor in determining if unlawful assistance has occurred is not only whether the employer provided special access to the union, but also management's actions with respect to any union meetings. For instance, in situations where members of management are not present during the meeting, or are present but do not have knowledge of who signed union cards, the Board has not found impermissible assistance.<sup>124</sup> Likewise the Board has not found assistance when management makes no promises of benefits or threats of reprisals.<sup>125</sup> On the other hand, when management makes meetings with the union mandatory, provides special access to the union, and stays in the meeting thereby learning who has signed a union card, the Board has held that this conduct violates the Act.

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<sup>119</sup> See e.g., *Phalanx Furniture, Inc.*, 2003 NLRB LEXIS 380, \*27 (2003).

<sup>120</sup> *Famous Castings Corp.*, 301 NLRB 404, 407 (1991).

<sup>121</sup> *Id.*

<sup>122</sup> *Tuschak/Jacobson, Inc.*, 223 NLRB 1298, 1306 (1976).

<sup>123</sup> *Coamo Knitting Mills, Inc.*, 150 NLRB at 582; see also *Manuela Manuf. Co., Inc.*, 143 NLRB 379, 385 (1963) ("The use of company time and property does not *per se* support a finding of support and assistance.")

<sup>124</sup> *Coamo Knitting Mills, Inc.*, 150 NLRB at 581-2.

<sup>125</sup> *Longchamps, Inc.*, 205 NLRB 1025 (1973).

In this case, it is critical to start with the allegations as drafted by the General Counsel in their Amended Second Consolidated Complaint. This was the third opportunity prior to the hearing to revise the complaint to precisely state the allegations against Local 862. They allege that “[a]bout February 20, April 11, and April 16, 2012, Respondent UAW International and Respondent UAW Local 862 received assistance and support from Respondent Voith which allowed Respondent UAW International and Respondent UAW Local 862 to meet with Respondent Voith’s employees...”<sup>126</sup> It is essential to view the record evidence regarding Local 862’s interactions with Voith’s employees and management on each date in question.

**1. February 20, 2012**

The General Counsel contends that Local 862 received unlawful assistance on February 20, 2012 during new employee orientation. Blackmon was required by Voith to participate in the training and was there by virtue of her employment with the Company rather than in any Local 862 or Voith management capacity.<sup>127</sup> When the group was permitted to take a break, Blackmon texted Stone and Hunt who promptly went to the cafeteria to take this opportunity to meet with the new employees.<sup>128</sup> This is consistent with Couch’s testimony that he never mentioned any union during the orientation session, that there was no union discussion on the agenda for the training and that he did not discuss union affiliation during that training session.<sup>129</sup>

The allegation of unlawful assistance on February 20 appears to rest entirely on the General Counsel’s witnesses’ inconsistent testimony. The General Counsel called four witnesses to discuss the orientation on February 20, 2012. Of these, Ceesay

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<sup>126</sup> Am. Sec. Consol. Cmplt at ¶ 19.

<sup>127</sup> Tr. at 2854-5.

<sup>128</sup> *Id.* at 2858-9.

<sup>129</sup> *Id.* at 1843.

testified affirmatively that Voith did not make any mention of the UAW during the orientation session. Robinson did not testify that Voith mentioned the UAW during the orientation. Jagers failed to testify that a Voith manager mentioned the UAW despite being questioned about the orientation break on both direct and cross examination. It was not until he was prompted on re-direct that Jagers suddenly recalled that some unidentified individual from Voith directed the new hires to go to the cafeteria to meet with the UAW. Notably, there was no mention of any such direction in Jagers' affidavit despite the fact that he was asked specifically about being directed to the cafeteria by the General Counsel's investigator.<sup>130</sup> The General Counsel's final witness, Farrell, testified that Couch told the new hires there would be "some union people down there."<sup>131</sup> But apparently it was not until he was in the cafeteria that he learned they were from the UAW.<sup>132</sup> Thus, half of the General Counsel's witnesses testified that there was no mention of unions or the UAW during orientation; one recalled the substance of the allegation only after prompting and inconsistently with his affidavit; and one recalled only a statement that there would "be some union people down there." This inconsistent testimony is insufficient to base a determination that Voith directed the new employees to meet with the UAW.

As discussed previously, a critical issue in determining unlawful assistance is whether management knew the identity of employees who signed cards or was present in the room when employees met with the union. In this case, there is consistent testimony that no member of Voith management was present in the cafeteria.

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<sup>130</sup> *Id.* at 643.

<sup>131</sup> *Id.* at 654.

<sup>132</sup> *Id.* at 649.

Moreover, there is undisputed testimony that Voith never saw the authorization cards, even when card check recognition was requested.

Another critical issue is that of special access to the union. In this case, there is no evidence that Voith provides Local 862 with special access to its employees. The undisputed testimony is that Local 862's agents had the right to be in the cafeteria without Voith's knowledge or permission.

In sum, there is no evidence that Voith management observed or participated in its employees' interaction with Local 862's agents on February 20, 2012. There is no evidence that Voith provided Local 862 with special access to its employees or workplace. Notably, the General Counsel adduced no evidence that Local 862 and Voith engaged in any communications with each other regarding the orientation. The slender reed of evidence in support of the unlawful assistance allegation on February 20 is a single witness (out of four) who testified that Voith management mentioned that a union would be in the breakroom. But the weight of the evidence, including the testimony of the other three General Counsel's witnesses and that of Couch and Stone is that Local 862 did not receive assistance and support from Voith in soliciting membership applications and dues check-off authorizations on February 20, 2012. The charge should be dismissed.

## **2. April 10, 2012**

Again, it is unclear if the General Counsel intends the interaction between Stone and certain Voith employees on April 10, 2012 to be included in its allegations against Local 862 and the International. In an abundance of caution, the Local and International respond to this allegation.

Stone testified without contradiction that he went to a small breakroom to talk to new employees on April 10, 2012 after learning from a Ford employee that new Voith employees were in orientation. There is no record evidence suggesting that Voith's managers leading the orientation informed the new employees that Stone would be present. There is no evidence to suggest that Voith's management directed the new employees talk to Stone during their break. There is no evidence supporting any assertion that Voith provided Stone access to this space to meet with the new employees. There is simply no evidence to suggest that Voith provided Local 862 with any assistance in meeting its new employees during their break on April 10, 2012. There was no evidence that Voith was even aware of the meeting between Stone and its new employees.

Critically, the General Counsel's witness agreed that Stone did not have union cards and did not solicit union cards or dues check-off authorizations during this impromptu meeting. The General Counsel failed to produce evidence sufficient to carry its burden of proof with respect to its allegation that Local 862 received assistance and support from Voith during this April 10, 2012 meeting with new Voith employees. This charge should also be dismissed.

### **3. April 11, 2012**

On April 11, 2012, the General Counsel alleges that Voith rendered and Local 862 accepted assistance in soliciting union cards. Again, the General Counsel relies on contradictory evidence from its own witnesses to support this allegation. As detailed previously, the General Counsel's witnesses testify variously regarding the arrival of Hunt and Blackmon, the interaction between Hunt and Frank, Frank's behavior prior to



Hunt's arrival, and the distance Frank and the supervisors were from the employees during their interaction with Hunt and Blackmon.

The General Counsel expended considerable time and effort to obtain Frank's personal and work cell phone records. Neither reflected a call to Frank at the time Frank released the employees for their break. To find that Local 862 received assistance in meeting with Voith employees on April 11, 2012 in the yard, it is necessary to discredit the testimony of Hunt and Blackmon that they did not contact Voith in advance of this meeting and the testimony of Frank that he did not arrange this meeting. In addition, it is necessary to ignore the documentary evidence of Frank's cell phone records which prove that Frank did not receive a phone call as alleged by the General Counsel. To find in favor of the General Counsel on this allegation, it is necessary to believe that there was some unknown and undisclosed communication between Local 862 and Voith for which no record evidence was produced. It is equally necessary to credit the inconsistent testimony of the General Counsel's witnesses. Given the General Counsel's obligation to prove the allegation that Local 862 received assistance by a preponderance of the evidence, it is clear that it has entirely failed to do so with respect to the April 11, 2012 allegation.

#### **4. April 16, 2012**

The General Counsel finally alleges that Local 862 received assistance in soliciting union authorization cards and dues check-off authorizations on or about April 16, 2012. The General Counsel's evidence at the hearing discusses an April 17, 2012 meeting that occurred on Ford property in a breakroom assigned to Voith employees. Again, the uncontradicted evidence is that Local 862's representatives had access to the breakroom without seeking the permission or authorization of any member of Voith

management. There was no record evidence that Voith management granted permission to Local 862 to be in the breakroom. It is undisputed that Voith employees working off site were returned to the site to take their breaks. It is disputed whether the employees were on a break at the time of the meeting, but it is undisputed that no employee was required to attend the meeting. As the General Counsel's witnesses testified, several chose not to attend the meeting or attended it only briefly. Clearly, the meeting was not mandatory. There is no evidence that a member of management was present in the breakroom except for the time Baker entered the breakroom, observed the interaction and promptly informed Frank and the brief time Frank was in the room informing the Voith employees that their break was over and they needed to return to work.

But perhaps the most critical fact regarding this meeting is the lack of authorization cards and dues check-off authorizations. There was no testimony from any witness, including the General Counsel's witnesses, that Local 862 solicited Voith employees during this meeting. And absent solicitation, the allegation cannot be sustained and should be dismissed.

**B. The General Counsel failed to produce any evidence that the International received unlawful assistance from Voith in soliciting union authorization cards from its employees.**

**1. February 20, 2012 & April 17, 2012**

The General Counsel also charged the International with receiving unlawful assistance. In the complaint, the General Counsel identified only Jimmie Settles and George Palmer as agents of the International.<sup>133</sup> There was no record evidence

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<sup>133</sup> Despite having the opportunity to amend the Complaint during the hearing and even after Respondents began presenting their case, General Counsel did not amend to name additional agents of the International.

regarding the conduct of Settles or Palmer with respect to any of the three dates alleged in the Complaint.

It is well-established that an International union is not vicariously liable for the actions of its locals. The Supreme Court addressed this issue in *Coronado Coal Co. v. United Mine Workers of America* in which it held that an international union is not per se liable for the acts of its locals.<sup>134</sup> The Supreme Court's pronouncement in *Coronado Coal* continues to be followed by courts and the Board. For instance, in *Shimman v. Frank*, the Sixth Circuit held that "[t]he wrongful conduct of these local union leaders cannot be imputed to the International, absent proof of actual International participation or ratification."<sup>135</sup> Lower courts within the Sixth Circuit have held likewise: "...a union, its local affiliates, and individual members are distinct entities, and one cannot be held liable for the acts of another."<sup>136</sup> The Board has taken the same approach, declining to find an International responsible for the actions of its local absent evidence that the International or its agents were involved in the unlawful conduct of the local.<sup>137</sup>

Only where there is record evidence that the International participated in or ratified the alleged illegal conduct of the local can it be held liable for that conduct.<sup>138</sup> The General Counsel failed to provide any evidence of the International's participation in any of the meetings in which it alleges the International benefitted from the assistance of Voith. More specifically, there was no testimony from any General

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<sup>134</sup> *Coronado Coal Co. v. United Mine Workers of Am.*, 268 U.S. 295 (1925).

<sup>135</sup> *Shimman v. Frank*, 625 F.2d 80, 98 (6<sup>th</sup> Cir. 1980).

<sup>136</sup> *Sowels v. Laborers' Internat'l Union of N. Am.*, 317 N.W.2d 195, 197 (Mich. App. 1981). *See also Small v. Internat'l Br. of Elec. Workers*, 626 F. Supp. 96, 98 (S.D. Ohio 1985) ("It has long been held that an international union is not per se responsible for the actions of its local.").

<sup>137</sup> *General Elec. Co.*, 94 NLRB 1260, 1263 (1951).

<sup>138</sup> In making this argument, neither Local 862 nor the International concede that either has acted in violation of the National Labor Relations Act with respect to the allegations against them.

Counsel, Voith or UAW witness that any official or agent of the International participated in the meetings on February 20 or April 16, 2012. Moreover, there was no documentary evidence establishing that the International participated in these interactions. Finally, there is no evidence suggesting that the International somehow ratified the conduct of Local 862 as they collected cards from Voith employees. In light of the General Counsel's failure to provide any evidence in support of these allegations, the International asks that they be dismissed.

## **2. April 10, 2012**

Just as the General Counsel failed to produce any evidence of unlawful assistance with respect to Stone's meeting new employees on April 10, 2012, so too it failed to provide any evidence that the International received unlawful assistance. Specifically, there is no evidence that any agent of the International was involved in that meeting or was involved in arranging the meeting. As such, any charges against the International related to that interaction must be dismissed.

## **3. April 11, 2012**

Stone testified that on April 11, 2012, Hunt reported to him that the Teamsters were soliciting cards from vehicle processing employees. Stone called the International's in-house counsel, Bill Karges, and asked if the Local should begin soliciting UAW cards again.<sup>139</sup> Karges apparently advised that the Local could solicit cards. This is the extent of any evidence regarding the International's involvement in the April 11, 2012 interactions between Hunt, Blackmon and the Voith employees in the yard. Karges advice that the Local could solicit cards comports with Board law regarding solicitation. The Local had every right to encourage Voith's employees to

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<sup>139</sup> There is no assertion in the Am. Sec. Consol. Cmplt. that Karges is an agent of the International.

become UAW members. There is no evidence that Karges advised the Local to seek or accept assistance from Voith in soliciting the cards. There is no evidence that the International had any discussions with Voith regarding solicitation of cards, access to Voith employees or any other assistance from the Company. There is no evidence that the International was aware of any alleged assistance provided by Voith to Local 862. Absent any evidence that the International was involved in or ratified the alleged illegal act – receiving assistance from Voith – it is improper to find against the International with respect to the April 11 allegation. Thus, the charge against the International of receiving assistance on April 11, 2012 should also be dismissed.

**C. Neither the International nor Local 862 acted improperly when they requested and accepted recognition as the exclusive collective bargaining agent for Voith’s vehicle processing employees.**

With respect to the allegation that the Union improperly received recognition at a time when it did not represent an uncoerced majority of the employees, “the burden is on the General Counsel to establish that the union does not represented a majority of the employees at the time of recognition. Circumstantial evidence, amounting to nothing more than conjecture, is not a substitute for proof of lack of majority.”<sup>140</sup>

The Board has further held that the General Counsel need not establish with “mathematical precision that the union lacks the support of an uncoerced majority of the employees.”<sup>141</sup> But when alleging unlawful assistance, it must show that the “employer’s conduct was sufficiently pervasive to taint the union’s majority status.”<sup>142</sup>

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<sup>140</sup> *Famous Castings*, 301 NLRB at 408 (quoting *Siro Security Serv., Inc.*, 247 NLRB 1266 (1980)). Thus, General Counsel’s assertions during the hearing that the Respondents had the burden of proving majority status are without merit.

<sup>141</sup> *Dairyland United States Corp.*, 347 NLRB 310, 311 (2006).

<sup>142</sup> *Siro Security Serv., Inc.*, 247 NLRB 1266, 1271 (1980).

In considering whether such a pattern of improper conduct exists, it is necessary to consider the totality of the circumstances.<sup>143</sup>

**1. February 22, 2012**

On February 22, 2012, Stone asked Voith for recognition of Local 862 as the exclusive representative of Voith's vehicle processing employees. At the time Local 862 sought recognition, it had a genuine, good faith belief that it had obtained authorization cards from a majority of Voith vehicle processing employees. In fact, it is undisputed that all 50 of Voith's vehicle processing employees signed UAW authorization cards. It became apparent later that Voith had not started normal vehicle processing operations and, perhaps, it was an inappropriate time to request authorization. Upon recognition of this fact, Voith withdrew recognition in April 2012. By virtue of withdrawing recognition, Voith and the UAW rectified its potential violation of the Act.

**2. May 1, 2012**

Local 862 continued to collect authorization cards and sought recognition again on or about May 1, 2012. The request was based on the fact that Voith was engaged in normal business operations on the date recognition was requested and Local 862 had authorization cards from 57 of the 75 Voith employees engaged in vehicle processing. There is no evidence supporting an assertion by the General Counsel that the UAW did not have cards from a majority of the full complement of workers at the time it requested recognition. Notably, the General Counsel identified four individuals who were terminated or resigned, but whose cards were used in the April 2012 card check. Even if these cards are excluded, the UAW still had cards from a majority of the Voith vehicle processors – 53 of the 75 employees.

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<sup>143</sup> *Dairyland*, 347 NLRB at 312.

Thus it is necessary to consider whether there is a pattern of unlawful assistance or coercion that invalidates all the cards obtained by the UAW. There is not. As thoroughly detailed above, the General Counsel failed to prove that Local 862 received unlawful assistance from Voith in soliciting union cards. With respect to each of the three instances in which the General Counsel alleges improper assistance, there is no evidence of any coordination or interaction between agents of Voith and those of Local 862 or the International. There was only inconsistent testimony that hinted at some advance knowledge by Voith that Local 862 intended to meet with their new employees on February 20 and April 11, 2012 to solicit membership in the UAW. The evidence was insufficient to support the allegations of assistance and is far too inconsistent to support an allegation of a pattern of assistance that invalidates the cards used in the April 2012 card check.

It is also necessary to consider the bit of evidence offered by the General Counsel of coercion to determine if a pattern of coercion existed that invalidates the cards. As detailed previously, there is no credible evidence of coercion. The General Counsel's witnesses testified that there were no cards at the April 10 or April 17 meetings. Thus, it is not possible that any employee felt coerced into signing a card on those dates. Moreover, the General Counsel's witnesses testified consistently with Local 862's witnesses that they were told they did not have to sign a UAW card at the February 20 meeting and were given literature that stated they had the right under the NLRA to refrain from supporting a union. There is inconsistent testimony regarding the April 11 interactions, but there was consistent testimony that Voith's employees were vocal about their right to refuse to sign a UAW card during that interaction and that many, if not most, employees present that day did not sign a UAW card. Based on this inconsistent

testimony, it is impossible to find a pattern of coercion in obtaining UAW cards that invalidates the cards offered to support card check recognition. The allegation that the International and Local 862 violated the Act by improperly seeking recognition should be dismissed.

### **III. CONCLUSION**

The allegations against Local 862 and the International are discrete. They involve incidents of alleged unlawful assistance on three specific dates and two instances of an improper demand for recognition. All charges should be dismissed. The weight of the evidence with respect to all three allegations of unlawful assistance falls squarely in favor of the UAW. In support of these allegations, the General Counsel provided only inconsistent evidence of Voith's knowledge of the UAW's attempts to solicit authorization cards on two of dates in question. This is insufficient to meet the preponderance of the evidence standard.

With respect to the recognition claims, Voith repudiated any unlawful conduct when it withdrew the recognition granted in February 2012. The General Counsel failed to provide any evidence that the UAW did not represent a majority of Voith's vehicle processors when it was granted recognition on May 1, 2012. Moreover, there is no evidence that the UAW engaged in a pattern of receiving unlawful assistance or engaging in coercive behavior that would permit invalidation of the cards. Local 862 and the International respectfully request that all charges against them be dismissed.



Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served upon the Division of Judges by electronic filing in pdf format using the Agency's E-Filing system on this 7<sup>th</sup> day of December, 2012.

I further certify that a copy of the foregoing was served upon the following by electronic mail in accordance with 29 CFR 102.114(a) on this 7<sup>th</sup> day of December, 2012:

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